



MALDEF

Mexican American Legal Defense and Educational Fund

Nina Perales, MALDEF Southwestern Regional Counsel
Statement Regarding the Reauthorization of
Section 5 of the Voting Rights Act

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Judiciary Subcommittee on the Constitution
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Mr. Chairman and Members of the Subcommittee, thank you for the invitation to testify regarding the reauthorization of Section 5 of the Voting Rights Act. I am Nina Perales, Southwestern Regional Counsel of MALDEF, the Mexican American Legal Defense and Educational Fund. Since our founding as a non-partisan civil rights organization in 1968, MALDEF has served as the primary organization that litigates voting rights cases on behalf of Latinos in the United States.

I will focus my remarks today on the impact of Section 5 upon Latino voters in the Southwestern United States. MALDEF intends to supplement this testimony with additional materials for the record.

As an attorney and Regional Counsel with MALDEF, I have litigated many Latino voting rights cases in Texas and Arizona. I served as lead counsel for the Latino plaintiffs in the Texas redistricting litigation of 2001, lead counsel for Latino defendant intervenors in the Arizona congressional redistricting litigation of 2001, and lead counsel for Latino plaintiffs in the Texas congressional redistricting litigation of 2003. I have litigated Section 5 enforcement actions involving relocation of polling places, changes in balloting systems, changes in petitioning procedures, and redistricting.

The Extension of Section 5 to the Southwestern United States

Section 5 was extended to the Southwest when Congress recognized that the widespread official discrimination against Latino voters had resulted in devastatingly low voter registration and turnout among Latino citizens. Congress also found that jurisdictions that were forced by litigation to abandon discriminatory election schemes tried to stay one step ahead of the courts by adopting new discriminatory practices that attempted to prevent Latino political empowerment.

For example, prior to its coverage under Section 5 in 1975, Texas enacted a series of restrictive election laws in reaction to federal directives that required it to open up its voting processes to Latino and African American voters. When the United States Supreme Court struck down the poll tax for all elections in 1966, the Texas legislature immediately enacted a law requiring all voters in the state to re-register with the county tax assessor once each year between October 1 and the following January 31. This had a

chilling effect upon Latino voter registration and, consequently, Latino political participation. The annual registration requirement was overturned by the U.S. Supreme Court in 1971. In 1972, the U.S. Supreme Court invalidated a Texas statutory scheme that imposed candidate filing fees, without write-in or other alternative provisions, that ranged as high as \$8,900. Further, with its decision in *White v. Regester* in 1973, the Supreme Court recognized vote dilution in Texas legislative redistricting as unconstitutional. Private litigants were, in effect, forced to try to keep pace with Texas's aggressive attempts to disenfranchise Latino voters prior to Section 5 being extended to the Southwest.

The Benefits of and Continuing Need for Section 5

Section 5 mitigates discriminatory election practices not only in congressional redistricting, but also at the state and local levels. By blocking discriminatory election practices before they go into effect, Section 5 protects Latino voters from local jurisdictions that seek to limit Latino political participation by developing new exclusionary voting schemes. In Texas, there have been one hundred and ninety six (196) Section 5 objections to proposed election changes since 1975, more than any other state covered by Section 5. Of these objections, the majority were objections to changes in local election practices.

For example, MALDEF filed suit in 2002 against the City of Seguin, Texas when it attempted to prevent Latinos from gaining a majority of seats on its city council. The 2000 Census showed that the growing Latino population in the Seguin comprised the majority of five of the eight city council districts. The City responded by dismantling the fifth Latino majority district in its new redistricting plan, but the Department of Justice indicated that it would not likely preclear a plan with such an obviously retrogressive effect.

Seguin restored the fifth Latino majority district but promptly closed the candidate filing period so that no Latino could run in the election for that district. On behalf of local voters, MALDEF filed a Section 5 enforcement action against the city. After we secured an injunction against Seguin's election timetable, the Department of Justice precleared Seguin's redistricting plan. As a direct result of Section 5, Latinos have now elected their candidate of choice to a majority of seats on the Seguin City Council.

This was not the first time that Section 5 was instrumental in protecting Latino voting rights in Seguin, Texas. MALDEF filed suit in 1978 and 1979 to force Seguin to redistrict and preclear its redistricting plan. Further, MALDEF filed another lawsuit in 1993 when the city again failed to redistrict and comply with Section 5. Section 5 works to ensure that repeat offenders such as the City of Seguin do not foreclose minority political participation by constantly devising and applying new methods of discrimination against Latino voters.

The Impact of *Georgia v. Ashcroft*

When Latino and Anglo voters consistently prefer different candidates, as is the case throughout much of the Southwest, the “effective exercise of the electoral franchise” is contingent upon maintaining Latino voters’ ability to elect their candidate of choice. For this reason, minority voters’ ability to elect their candidate of choice has been the touchstone of the retrogression analysis. The recent U.S. Supreme Court decision in *Georgia v. Ashcroft* diverges from that standard and leaves minority voters with little protection against redistricting plans that diminish their political strength.

In the Southwest, “influence districts” provide only the illusion of full political participation. The reality of strict racially polarized voting and regional racial segregation means that in most instances Latino voters in minority Latino influence districts actually exercise little real influence over the outcome of elections or the representative who is ultimately elected. Deprived of the ability to elect their own candidate of choice, Latino voters may either “chime in” with the majority or suffer electoral defeat.

Section 5 objections interposed by the Justice Department with respect to Arizona legislative redistricting in 2002 and Texas legislative redistricting in 2001 highlight the need to preserve the ability to elect standard for Latino voters. In both cases, statewide redistricting plans in these states pared down Latino majority districts so that they no longer provided the opportunity to elect the Latino candidates of choice. Pursuant to Section 5, the Justice Department stepped in and halted these redistricting plans before they went into effect. Without a retrogression standard that recognizes the role of racially polarized voting in contemporary elections and protects Latino voters’ choices, Latinos will be left with no safeguard against redistricting plans that dismantle or eliminate Latino majority districts.

Conclusion

This nation is still subject to the problem that Section 5 was developed to address. Even today, many jurisdictions still respond to growth in minority political power by restricting minority political opportunity. In Texas and Arizona, for example, the Justice Department continues to interpose a significant number of objections; the deterrent effect of Section 5 stops many discriminatory election changes before they are enacted by covered jurisdictions.

Despite what you may hear from opponents of the Voting Rights Act, the emergency that led to the adoption of Section 5 has not passed. Latino voters have not yet closed the gap in voter registration and turnout in the Southwest. Racially polarized voting has not declined significantly in the past 25 years, particularly in local elections.

I urge you today to reauthorize Section 5 with language clarifying congressional intent to prohibit intentional discrimination and to restore ability to elect as the touchstone for the Section 5 retrogression analysis. Thank you.